

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jeff Czeczok,

Complainant,

vs.

**DISMISSAL ORDER**

Gary Scheeler,

Respondent.

On October 28, 2013, Jeff Czeczok (Complainant) filed a Campaign Complaint with the Office of Administrative Hearings. Mr. Czeczok alleged that Gary Scheeler (Respondent) violated Minn. Stat. § 211B.13 during Scheeler's campaign for Brainerd City Council in 2012. After reviewing the Complaint, the undersigned Administrative Law Judge determined that it set forth *prima facie* violations of Minn. Stat. § 211B.13 on the part of Mr. Scheeler.

Following a prehearing conference in this matter and pursuant to the timelines set out in the prehearing order, the parties filed and served dispositive motions and responses. Respondent filed a motion to dismiss and the Complainant filed a motion to toll the statute of limitations.

Based on all of the filings and proceedings herein, and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

1. That the Respondent's Motion to Dismiss is GRANTED.
2. That the Complainant's Motion to toll the one-year statute of limitations and find the Complaint timely is DENIED.
3. That the Complaint filed by Jeff Czeczok against Gary Scheeler is DISMISSED.
4. That the evidentiary hearing in this matter scheduled for February 10, 2014, is CANCELLED.

Dated: January 24, 2014

s/LauraSue Schlatter

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LAURASUE SCHLATTER  
Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

### Background Facts

The Complainant, Jeff Czeczok, ran unsuccessfully for Brainerd City Council Ward 3 in the November 2012 election. Mr. Czeczok lost the election to the Respondent, Gary Scheeler, by ninety-two votes.<sup>1</sup> The Complaint alleges that sometime during the 2012 campaign season, Mr. Scheeler engaged in activities that violated the Fair Campaign Practices Act. Specifically, the Complaint alleges that, while campaigning for votes, Mr. Scheeler violated Minn. Stat. § 211B.13 by providing money to a woman to purchase a meal for herself and her two children, and by encouraging a homeless man to apply for a job at Brainerd Country Power Equipment, a company Mr. Scheeler owns.

According to the Complaint, Mr. Scheeler described his encounter with the woman and the homeless man during a closed session of the Brainerd City Council on January 7, 2013. Mr. Scheeler and Mr. Czeczok agree that that portion of the City Council meeting was closed for discussion of union negotiation strategy.<sup>2</sup> The Complaint states that Mr. Scheeler also commented generally that he donated more in his 2012 campaign “than to all the churches” and that his wife told him he would “go broke if he continued campaigning in the manner he was describing.”<sup>3</sup> Those attending the closed session included all of the members of the Brainerd City Council, Brainerd City Attorney Andrew Fitzpatrick, City Administrator Theresa Goble, and other city officials.

Mr. Czeczok states that he only became aware of Mr. Scheeler’s actions on June 20, 2013, when he listened to the audio recording of the closed session portion of the January 7, 2013, City Council meeting. He filed this Campaign Complaint approximately four months later on October 28, 2013.

### Respondent’s Motion

In his affidavit attached to his motion to dismiss, Mr. Scheeler states that he was campaigning door to door in September 2012 near the border of Ward 3,

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<sup>1</sup> *Czeczok v. Scheeler*, Docket No. 80-0325-31075, COMPLAINANT’S RESPONSE TO MOTION TO DISMISS, AFFIDAVIT OF JEFFREY V. CZECZOK (Czeczok Aff.), ¶ 3 (Jan. 17, 2014).

<sup>2</sup> *Czeczok v. Scheeler*, Docket No. 80-0325-31075, COMPLAINT FORM (Complaint), p. 2 (Oct. 28, 2013). See RESPONDENT’S MOTION TO DISMISS, AFFIDAVIT OF GARY SCHEELER (Scheeler Aff.), ¶ 2 (Dec. 27, 2013).

<sup>3</sup> Complaint, p. 2.

when he stopped at the house of a woman with three children. He states that the house was located somewhere on North 10<sup>th</sup> Street.<sup>4</sup> Mr. Scheeler states that the woman told him about her difficult financial situation and confided to him that she had only dry bread to serve her children for dinner that night. On hearing this, Mr. Scheeler states, he offered the woman money to buy some food to feed her children. Mr. Scheeler maintains that the offer was purely charitable and was not made with the intention to induce the woman to vote for him. In fact, Mr. Scheeler claims that he told the woman, “I am not looking for a vote here, this is just . . . , go get some food.”<sup>5</sup>

In addition, Mr. Scheeler insists that the woman’s house was actually located in Ward 2, just outside of the Ward 3 boundary. According to Mr. Scheeler, the boundaries for Ward 3 recently changed with redistricting and now “jog back and forth.” Mr. Scheeler maintains that while he was talking to the woman, he realized her house was almost a block outside of his ward. Thus, he asserts that the woman could not have voted for him even if she was so inclined.<sup>6</sup> Mr. Scheeler does not identify the woman, or her exact address. He states he is confident his interaction with this woman occurred no later than early September 2012.<sup>7</sup>

Mr. Scheeler also asserts that the homeless man he encountered while campaigning did not live in his ward and therefore could not be induced to vote for him.<sup>8</sup> When Mr. Scheeler suggested that the man apply for a job at Brainerd Country Power, he contends that the man stated that he did not know where the company was, and told him that he was “not from around here.”<sup>9</sup> Moreover, Mr. Scheeler points out that he did not offer the man anything of monetary value. Instead, Mr. Scheeler maintains that he only suggested that the man apply for a job at Brainerd Country Power. Mr. Scheeler did not give or promise to give the man a job; nor did he tell the man he was the owner of the company.<sup>10</sup> Mr. Scheeler states further that he checked his company’s records and no one residing in Ward 3 applied for a job during the years 2012 or 2013.<sup>11</sup>

As for the timing of this interaction, Mr. Scheeler states that his encounter with the homeless man occurred in either late August or early September of 2012. Mr. Scheeler bases this assertion on his memory of the weather being very warm.<sup>12</sup>

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<sup>4</sup> Scheeler Aff. at ¶ 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Scheeler Aff. at ¶ 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Mr. Scheeler argues that both of these incidents and his general statement that he donated more “in this campaign trail than I have in all the churches,” are insufficient to support finding a violation of Minn. Stat. § 211B.13. Mr. Scheeler asserts that Mr. Czczok has failed to put forth evidence that he intentionally or willfully gave or promised anything of monetary value to either person to induce them to vote for him.

Finally, Mr. Scheeler argues that, because the Complaint was filed more than one year after the alleged incidents occurred, it is untimely.<sup>13</sup> For all of these reasons, Mr. Scheeler asserts the Complaint should be dismissed.

### **Complainant’s Response**

As to the merits of the allegations, Mr. Czczok maintains Mr. Scheeler’s broad statements about donating more in his 2012 campaign “than to all the churches” constituted admission of a “general, ongoing breach of the statute throughout the course of his campaign.”<sup>14</sup> In addition, Mr. Czczok contends that giving money for food and encouraging someone to apply for a job while campaigning for office is a direct violation of the statute.<sup>15</sup>

Mr. Czczok argues that Mr. Scheeler’s claim that the voting ward boundaries “jog back and forth” and are ambiguous is not credible. He questions Mr. Scheeler’s failure to provide an address for the home where the offer of money for food took place. Mr. Czczok points out that Mr. Scheeler does not establish that he was, in fact, outside the district.<sup>16</sup> Mr. Czczok points to his own affidavit in which he states that North 10<sup>th</sup> Street, where Mr. Scheeler says he was campaigning when he had the conversation at issue, does not jog back and forth. He alleges it is a north-south street and is the west boundary of Ward 3.<sup>17</sup>

Mr. Czczok asserts that Mr. Scheeler’s acknowledgment that he told the woman he was “not looking for a vote” is an admission that he knew he was violating Minn. Stat. § 211B.13. Mr. Czczok reasons that Mr. Scheeler would not have had to deny his motivation for giving the woman the money if his true intentions were not in violation of the statute.<sup>18</sup>

Mr. Czczok argues that Mr. Scheeler has failed to show “by clear and convincing evidence” that the two encounters described in the Complaint

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<sup>13</sup> See Minn. Stat. § 211B.32, subd. 2.

<sup>14</sup> Complainant’s Response Memorandum at pp. 1-2.

<sup>15</sup> Complainant’s Response Memorandum at p. 9. The Complainant also raises an allegation he made in a separate complaint that was subsequently dismissed. See, Order of Dismissal, OAH Docket 60-0325-31147 (December 5, 2013). That allegation is not part of this Complaint and will not be considered.

<sup>16</sup> *Id.* at p. 2.

<sup>17</sup> Czczok Aff., ¶ 28.

<sup>18</sup> Complainant’s Response Memorandum at p. 2.

occurred before October 28, 2012.<sup>19</sup> According to the Complainant, “it is far more logical to assume acts of bribery would occur quite close to Election Day, as opposed to months before.”<sup>20</sup>

With respect to the timeliness of the Complaint, Mr. Czczok argues that the one-year statute of limitations should be tolled because Mr. Scheeler effectively concealed his conduct by only disclosing it during the closed session portion of the City Council’s January 2013 meeting. Mr. Czczok contends that until the audio recording of the City Council session was made public on June 20, 2013, there was no way for him to have learned of Mr. Scheeler’s actions. Mr. Czczok argues that the one-year limitations period should begin to run as of that date.<sup>21</sup>

## **Legal Background**

### **Motion Standard**

As an initial matter, the Administrative Law Judge finds that Respondent’s motion, although labeled as a motion to dismiss, is more appropriately treated as a motion for summary disposition. When matters outside the pleadings are presented to be considered, the motion must be reviewed under a summary disposition standard.<sup>22</sup> In this case, Respondent attached an Affidavit of Gary Scheeler to the motion. Accordingly, the Administrative Law Judge will review the matter as a motion for summary disposition.

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.<sup>23</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>24</sup> A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>25</sup>

When considering a motion for summary disposition, the Court must view the facts in the light most favorable to the non-moving party.<sup>26</sup> All doubts and

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<sup>19</sup> Complainant’s Response Memorandum at 7.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.*

<sup>22</sup> *Northern States Power Co., d/b/a Xcel Energy v. Minnesota Metropolitan Council, Minnesota Dept. of Transportation, et al*, 648 N.W.2d 485 (Minn. 2004); Minn. R. Civ. P. 12.03 and 56.

<sup>23</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500K; Minn. R. Civ. P. 56.03.

<sup>24</sup> See Minn. R. 1400.6600.

<sup>25</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

<sup>26</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

factual inferences must be resolved against the moving party.<sup>27</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>28</sup>

## **Governing Statutes**

### **Minnesota Statutes section 211B.32, subdivision 2, limitation on filing.**

The threshold question in this matter is the timeliness of the Complaint. Complaints alleging violations of the Fair Campaign Practices Act must be filed within one year after the occurrence of the act or failure to act that is the subject of the complaint.<sup>29</sup> The statute includes an exception for acts involving fraud, concealment, or misrepresentation where the conduct could not be discovered during that one-year period. In those cases, the complaint may be filed with the OAH within one year after the fraud, concealment, or misrepresentation was discovered.<sup>30</sup>

The limitations period issue in this case raises two questions:

- a) Was the Complaint in this matter filed within one year of the alleged conduct?
- b) If the Complaint was not filed within one year of the alleged conduct, could that conduct reasonably have been discovered?

If the answer to both of these questions is “no,” the Administrative Law Judge lacks statutory authority to consider the Complaint.<sup>31</sup>

### **Minnesota Statutes section 211B.13, Bribery, Treating and Solicitation.**

Minnesota Statutes section 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. . . .

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<sup>27</sup> See, e.g., *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Campbell*, 845 F. Supp. 665, 672 (D. Minn. 1994).

<sup>28</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>29</sup> Minn. Stat. § 211B.32, subd. 2.

<sup>30</sup> *Id.*

<sup>31</sup> See, *Abrahamson v. St. Louis County School District 2142*, 819 N.W.2d 129, 138-39 (Minn. 2012).

Minnesota Statutes section 211B.13 is an anti-bribery statute. It prohibits willfully giving something of monetary value in order to induce a voter to vote in a particular way at an election. It does not prohibit all charitable donations from candidates for public office. Instead, section 211B.13 draws the prohibition more narrowly, banning only those gifts that are given with the purpose of inducing voters to either refrain from voting, or to vote in a particular way.

## Analysis

### Limitations Period

Viewing the facts in the light most favorable to the Complainant, and considering all the filings and arguments of the Parties, the Administrative Law Judge concludes that the Complaint is untimely and must be dismissed.

Campaign complaints must be filed within one year after the occurrence of the act or failure to act that is the subject of the complaint. The statutory exception to this limitations period applies if the act or failure to act involves fraud, concealment, or misrepresentation *that could not be discovered during the one-year period*. If that is the case, the complaint may be filed with the Office of Administrative Hearings within one year after the fraud, concealment, or misrepresentation was discovered.<sup>32</sup>

Here, Mr. Scheeler states that the incidents most likely occurred in early September 2012. Mr. Czczok has put forward no evidence to counter this claim. He simply states generally that it is more logical that the encounters occurred closer to election day. Without some factual evidence that the encounters occurred on or after October 28, 2012, this general averment on the part of Mr. Czczok is insufficient to render the filing of the Complaint timely. Contrary to Mr. Czczok's assertion in his responsive memorandum, the burden of proving the timeliness of the Complaint as well as the violation alleged is on the Complainant.<sup>33</sup>

Because there is insufficient proof that the Complaint was filed within a year after the occurrence of the acts that are the subject of the Complaint, the next question is whether the exception tolls the limitations period. For the exception to apply, Mr. Czczok would have to show that Mr. Scheeler engaged in "fraudulent or intentional" concealment of his conduct that "could not have

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<sup>32</sup> Minn. Stat. § 211B.32, subd. 2. (Emphasis added.)

<sup>33</sup> Unlike the *prima facie* stage of these proceedings, where the Complainant's allegations are presumed to be true for purposes of the *prima facie* determination, at the dispositive motion stage the sworn affidavit testimony submitted with Respondent's dispositive motion establishes facts that contradict the allegations in the Complaint. The Complainant bears the burden of proving his allegations. It is true that, in the dispositive motion stage, the facts are viewed in the light most favorable to the non-moving party. But if the non-moving party is to prevail, he must allege facts sufficient to counter the evidence provided by the moving party. See Motion Standard discussion, above.

been discovered sooner by reasonable diligence.”<sup>34</sup> Fraudulent concealment tolls the limitations period “only if it is the very existence of the facts which establish a cause of action that are fraudulently concealed.”<sup>35</sup> Mr. Czczok has not presented any evidence that Mr. Scheeler fraudulently concealed his interactions with the woman and homeless man at issue. On the contrary, it appears Mr. Scheeler openly disclosed to the entire City Council and other city officials the existence of the facts that form the basis of the complaint – namely, giving a woman money to feed her children and encouraging a homeless man to apply for a job at his company.

Finally, even if Mr. Czczok had shown that Mr. Scheeler concealed his conduct, the limitations period would still not be tolled. Mr. Czczok discovered the alleged misconduct during the one-year period when he listened to the audio tapes of the City Council meeting on June 20, 2013. Both parties agree that the conduct at issue did not occur before late August 2012. Therefore, even if the acts that are the subject of the complaint involved fraud, concealment or misrepresentation, they could be, and were, discovered by Mr. Czczok within the one-year period after they occurred. Because Mr. Czczok discovered the alleged misconduct well within the one-year period, the exception for tolling the limitations period does not apply.

After listening to the tapes on June 20, 2013, Mr. Czczok waited more than four months to file this complaint. Mr. Czczok’s only explanation as to why he waited four months is that, “for a lengthy period of time,” he sought to have someone who attended the closed session of the City Council meeting take action.<sup>36</sup> When no one was willing to get involved, the Complainant states that he began researching how to file a complaint himself. He maintains that the complaint was filed “as expeditiously as possible by a blind man with complicated access to research materials and with no standing other than [being a] concerned citizen.”<sup>37</sup> Had Mr. Czczok not waited for such a “lengthy period of time” and filed the complaint by the end of August 2013, the Complaint would have been timely.

### **Substance of the Complaint**

Even if the Complaint were timely or the statute of limitations was tolled, the Complainant has failed to allege sufficient facts to support his claims that Respondent violated Minn. Stat. § 211B.13 by willfully offering persons something of monetary value in order to induce them to vote for him. Moreover, it is unclear whether the two persons Respondent allegedly bribed lived in Ward 3 and could, in fact, vote for the Respondent.

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<sup>34</sup> *Collins v. Johnson*, 374 N.W.2d 536, 541 (Minn. Ct. App. 1985).

<sup>35</sup> *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 918-19 (Minn. 1990).

<sup>36</sup> Complainant’s Response Memorandum at 1.

<sup>37</sup> *Id.*



With respect to the homeless man, Mr. Czczok has failed to show that the Respondent offered or promised him employment or something else of monetary value. The fact that Mr. Scheeler encouraged the man to *apply* for a job at his company is insufficient to support finding that Respondent willfully offered or promised him employment or something of monetary value in order to induce him to vote for Mr. Scheeler. This is especially so in the face of Mr. Scheeler's un rebutted testimony that he did not tell the man that he owns Brainerd Country Power. Thus, when viewing the facts as alleged in the light most favorable to Mr. Czczok, they fail to support finding a violation of Minn. Stat. § 211B.13.

Likewise, there is no evidence that Mr. Scheeler's offer of money to the impoverished woman was intended as anything other than a charitable donation. Mr. Czczok did not dispute Mr. Scheeler's statement that he told the woman he was not attempting to buy her vote with the offer of money for groceries. Mr. Czczok disputes Mr. Scheeler's motivation for making the statement, but offers no evidence to show why the statement should not be taken at face value. A candidate's open admission that he made a charitable donation during campaign season does not prove a violation of Minn. Stat. § 211B.13. The very fact that Mr. Scheeler spoke about this incident in front of a room full of city officials including the City Attorney is evidence that Mr. Scheeler did not believe he had anything to hide.

Because the Complainant discovered the alleged conduct at issue within the one-year statutory period and because he has not established a fraudulent intent on the part of the Respondent to conceal the facts that give rise to the Complaint, the Complaint is untimely. Moreover, even if the Complaint had been timely filed, the facts alleged by the Complainant, even if true, are insufficient to support finding the Respondent violated Minn. Stat. § 211B.13.<sup>38</sup>

The Respondent's Motion to Dismiss this matter is GRANTED. The Complaint is dismissed as untimely and lacking sufficient facts to support finding a violation of Minn. Stat. § 211B.13.

**L.S.**

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<sup>38</sup> Based on this ruling, the Complainant's motion to toll the statute of limitations is denied.